

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	MM Docket No. 00-39
Review of the Commission's	)	
Rules and Policies Affecting the	)	
Conversion to Digital Television	)	
To: The Commission		

**MSTV/NAB/ALTV COMMENTS**

April 6, 2001

## SUMMARY

In this proceeding, the Commission has taken an important step toward ensuring that consumers have access to television sets capable of demodulating, decoding, and displaying DTV signals. Today, broadcasters face statutory and regulatory deadlines requiring them to spend millions of dollars to broadcast digital signals that very, very few households are capable of receiving. If the DTV transition is to proceed with any semblance of adherence to congressional expectations about the timely return of analog spectrum, the Commission must now adopt a DTV tuner requirement to increase DTV receiver penetration, which is so necessary – though by no means sufficient (cable carriage and copy protection issues, among others, also must be resolved) – to a quick transition. Ultimately, broadcasters, cable operators, content providers and equipment manufacturers all must play a role, and the Commission must exercise its authority to facilitate the cross-industry participation essential to a timely and successful transition.

In implementing a DTV tuner requirement, the Commission should take into account the effects of various implementation plans on prices, consumer acceptance, and penetration rates. To most quickly advance the DTV transition, the Commission should adopt a blanket DTV tuner requirement mandating that all television receivers 13 inches and larger be capable of tuning DTV signals. A blanket requirement has the advantage of maximizing the economies of scale that will drive prices down. It also will serve consumers by affording early access to DTV and, in the intermediate-to-long run, by ensuring that the sets consumers purchase during the transition will continue to work in the new, all-digital era. If the Commission nonetheless finds that a phased requirement proves necessary to afford manufacturers flexibility or to avoid initially high prices, it should adopt an implementation schedule that reaches 100% DTV tuner inclusion within four years. A phased approach that is too conservative simply would not encourage DTV receiver penetration, foster consumer confidence, or lead to the timely return of analog spectrum.

The norm of television sets being capable of over-the-air reception is so well established that any departure certainly must come with notification to consumers. If manufacturers choose to produce digital monitors that are incapable of any over-the-air reception, despite consumer expectations, those sets at a minimum should be clearly labeled as to their limitations.

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The Association for Maximum Service Television, Inc. ("MSTV"), the National Association of Broadcasters ("NAB"), and the Association of Local Television Stations, Inc. ("ALTV")<sup>1</sup> file these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding ("*DTV FNPRM*").<sup>2</sup> Though the Commission unfortunately declined to adopt performance thresholds for DTV receivers in the *DTV Biennial Review Order*,<sup>3</sup> the Commission's *DTV FNPRM* takes a welcome and much needed step toward implementing a DTV tuner requirement. Significant Commission action in the form of a DTV tuner requirement is necessary if all stakeholders are to enjoy a reasonably quick transition to

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<sup>1</sup> MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. NAB serves and represents the American broadcast industry as a nonprofit incorporated association of radio and television stations and broadcast networks. ALTV is a nonprofit trade association representing local television broadcasters across this country.

<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking, *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, FCC 01-24 (rel. Jan. 19, 2001) ("*DTV Biennial Review Order*" and "*DTV FNPRM*").

<sup>3</sup> See *DTV Biennial Review Order*, ¶ 96.

DTV, allowing the Commission to recover the analog spectrum while promoting consumer access to digital content.<sup>4</sup>

Congress and the Commission have, together with the television industry, set an ambitious goal of replacing analog television technology with digital on an accelerated schedule. Currently, broadcasters must invest at least \$1 million to \$2 million in capital per station to broadcast a digital signal to a very limited number of over-the-air digital receivers. (Full conversion may cost five times as much.) At the same time, millions of new analog television receivers are sold each year. As consumers purchase more and more analog receivers, the goal of having digital television in 85% of households becomes more difficult to achieve.<sup>5</sup> Moreover, no single television manufacturer has an incentive to include DTV reception capability in a majority of its television sets for fear of a competitive cost disadvantage versus manufacturers who decline to make this investment.<sup>6</sup> These problems would be minimized and the transition accelerated if all new television sets were required to receive, process, and display digital signals. As consumers purchase these DTV-capable sets in the normal course of replacing their existing sets, DTV penetration levels will naturally increase and consumer resistance to completing the transition will recede. Accordingly, the Commission must encourage adoption of new technology and provide a level competitive field for manufacturers by implementing a DTV

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<sup>4</sup> Though a DTV tuner requirement is necessary for a quick transition, the requirement alone is not sufficient. The Commission also must resolve other crucial issues, including dual cable carriage during the transition and copy protection standards.

<sup>5</sup> And, even if that goal is reached for the primary set in TV households, an increasing number of analog receivers will result in great consumer resistance to shutting off analog service.

<sup>6</sup> See Dr. Joseph S. Kraemer, Testimony before the Senate Commerce Committee on the Subject of the Transition to Digital Television, at 12 (March 1, 2001) ("Kraemer Testimony").

tuner requirement that applies to all or a substantial number of new television sets and that applies to all manufacturers equally.<sup>7</sup>

**I. A DTV TUNER REQUIREMENT IS NECESSARY AND SHOULD BE ADOPTED IMMEDIATELY.**

In seeking comment on the benefits and costs of requiring DTV reception capability in new television sets, the Commission states that it is “concerned about the potential impact of such a requirement on consumers.”<sup>8</sup> As it evaluates the consumer consequences of a DTV tuner requirement, the Commission should consider not only receiver prices but also the benefit to consumers of assuring that sets purchased today will not be obsolete at the close of the transition. At this time, it is necessary for the Commission to implement some form of effective DTV tuner requirement expeditiously, and the Commission should not exaggerate the predicted costs to consumers.<sup>9</sup>

In order to answer the complex cost questions and to help the Commission make a completely informed decision about implementing a DTV tuner requirement, MSTV and NAB have retained a consulting firm to study the effects of various implementation plans on television set costs and consumer adoption rates. The study, which does not seek to support any predetermined conclusion, will take approximately eight weeks. Upon its completion, MSTV

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<sup>7</sup> The industry’s commitment to and the Commission’s reaffirmance of the VSB transmission standard, *see DTV Biennial Review Order*, ¶¶ 91-92, have removed any perceived obstacle to adopting a DTV tuner requirement.

<sup>8</sup> *DTV FNPRM*, ¶ 107.

<sup>9</sup> The marketplace already would have responded with a wide selection of DTV receivers if including DTV reception capability were completely cost-free. But the marketplace has not responded effectively, and Commission action is necessary. This is precisely what the Commission has done in a few previous circumstances and for reasons closely analogous to those that the Commission confronts here. *See § II, infra.*

and NAB plan to make the study's report available to the Commission and the public. We respectfully submit that the results of this study will prove useful to the Commission by providing reliable data on which to base the selection and implementation of an appropriate DTV tuner requirement. In the meantime, MSTV, NAB, and ALTV provide the following comments on the necessity of a DTV tuner requirement. We hope that the study can be received by a Commission that already has determined that the public interest compels a DTV tuner requirement and that the questions which remain are how and how quickly it will be implemented.

Though hindsight provides the opportunity to consider that the DTV transition might have been better structured from the beginning, the current question is: What will be the effect of the choices that the Commission now makes on how quickly the transition is concluded? Dr. Joseph S. Kraemer, in testimony before the Senate Commerce Committee, recently posited three DTV transition scenarios. They range from rapid (85% penetration is reached in most communities in 2006-08 and analog spectrum is recovered by 2010-11) to moderate (85% penetration is reached in 2010-2011; analog spectrum is recovered by 2014-15) to slow (85% penetration is reached after 2014; analog spectrum is recovered by 2020).<sup>10</sup> Crucially, Dr. Kraemer concludes that the transition will occur rapidly only if the Commission requires that all new television sets 13 inches and larger be capable of receiving over-the-air DTV signals by a certain date, for example, January 1, 2004.<sup>11</sup>

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<sup>10</sup> See Kraemer Testimony at 6-7, 14-19.

<sup>11</sup> See *id.* at 15. Moreover, Dr. Kraemer contends that a digital must-carry requirement (even one of limited duration) is a necessary adjunct to a DTV tuner requirement in order to generate widespread public interest in DTV sufficient to develop a market-driven transition. See *id.* at 13, (continued...)

**A. A Blanket DTV Tuner Requirement Would Speed The Transition Most Quickly.**

In order to move the DTV transition along quickly, the Commission should require that all new television sets with screens of 13 inches or larger that are capable of receiving any over-the-air signal be capable of receiving (demodulating, decoding, and displaying) digital over-the-air signals. Clearly, as the Commission states, a DTV tuner requirement “would reduce reliance on analog signals,”<sup>12</sup> and a blanket requirement would most quickly provide a core audience for the DTV signals that broadcasters are transmitting and are required to transmit.

The Commission properly is concerned – as are broadcasters – with ensuring that costs to consumers are not too high.<sup>13</sup> Because of economies of scale, however, fears of high costs most certainly are exaggerated. Moreover, there is the countervailing concern that consumers should not be stuck with analog-only sets that will not work in the all-digital post-transition environment. Manufacturing costs from a blanket DTV tuner requirement would be spread over a very large number of television sets, and the great volume of integrated circuits required would drive component prices down.<sup>14</sup> Before rejecting a blanket DTV tuner requirement, the Commission should obtain a reliable and unbiased projection of the short- and

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16. In this regard, digital must-carry during the transition is critically important for the successful and timely deployment of DTV.

<sup>12</sup> *DTV FNPRM*, ¶ 107.

<sup>13</sup> *See id.*, ¶ 108.

<sup>14</sup> *See Kraemer Testimony at 12.* (“The engineering and design costs needed to make [sets capable of DTV reception] would not be high on a per-TV-set basis if all TV sets had to have this capability.”).



long-term costs of such a requirement, such as will be provided by the MSTV- and NAB-commissioned study.

**B. If The Commission Declines To Adopt A Blanket DTV Tuner Requirement, It Should Immediately Implement A Phased DTV Tuner Requirement Designed To Reach 100% Inclusion Quickly.**

Broadcasters want to ensure that television sets equipped with DTV tuners are within consumers' reach. Having sets capable of DTV reception lining store shelves but not in homes does nothing to further the transition. Thus, the DTV tuner requirement adopted by the Commission should be sensitive to consumer interests, recognizing that consumers do not benefit from purchasing new analog sets that will become obsolete in the digital world. As noted above, an immediate DTV tuner requirement for all sets of 13 inches or larger would promote the speediest migration to DTV and recovery of analog spectrum, and any increased costs would be mitigated from the outset by economies of scale. As a second-best alternative, MSTV, NAB and ALTV would accept a phased-in tuner requirement, provided that the Commission devised an approach that would both reduce consumer expense and ensure the swift and steady adoption of DTV technology by consumers.

If the Commission is to have any hope of approaching reasonable DTV penetration levels, even short of the aggressive timetable established by Congress in the 1997 Budget Act, any phase-in approach must assure that all new television sets of 13 inches or larger will be equipped with DTV tuners within the next four years. The Commission proposed a phased approach that initially would require manufacturers to include DTV tuners in a certain percentage of large-screen sets.<sup>15</sup> The Commission might also consider requiring DTV reception

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<sup>15</sup> See *DTV FNPRM*, ¶ 108.

capability in *either* all new television sets of a certain size and larger (with the set size decreasing at each phase) *or* a certain percentage of a manufacturer's television sets (with percentages increasing at each phase).<sup>16</sup> If the Commission selects a size-based phase-in approach, we would suggest applying a DTV tuner requirement immediately to all new sets 30 inches and larger; in two years, extending the requirement to sets 19 inches and larger; and two years later, completing the phase-in by extending the requirement to all sets 13 inches and larger.<sup>17</sup> Alternatively, the Commission could require that initially 33% of a manufacturer's new television sets 13 inches and larger have DTV reception capability, and it could increase that percentage to 67% in two years and 100% in four years. Whichever approach the Commission adopts should be designed to quickly reach 100% DTV tuner inclusion. A too slow phase-in would undermine the effective introduction of DTV sets, foster consumer uncertainty regarding the DTV transition, and delay the ultimate release of the analog spectrum.

**C. Although Integrated DTV Tuners Are Preferable, Separate Set-Top DTV Tuner-Decoders Could Be Included In The Initial Receiver Capability Requirement.**

The Commission states that “[s]eparate set-top DTV receivers could be included in meeting the reception capability requirements.”<sup>18</sup> MSTV, NAB, and ALTV believe that DTV tuners built into television sets would be most attractive to consumers and thus believe that manufacturers should meet a DTV tuner requirement by integrating DTV tuners into their

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<sup>16</sup> Of course, any DTV tuner requirement would apply only to television sets manufactured for sale in the United States.

<sup>17</sup> Size thresholds of 30 inches and 19 inches, rather than 32 inches and 21 inches, comport more closely with actual television size categories and would discourage designing sets slightly smaller than the thresholds in order to avoid the requirement.

<sup>18</sup> *DTV FNPRM*, ¶ 108.

television sets. To the extent that manufacturers need flexibility to initially comply with a DTV tuner requirement, however, we would not oppose the conclusion that manufacturers could use separate set-top DTV tuner-decoders to meet a DTV tuner requirement so long as the tuner-decoder is part of an indivisible DTV television set package (*i.e.*, a television set that may be sold without the set-top DTV tuner-decoder will not count toward the requirement). Additionally, a new DTV set with an external tuner-decoder must be no less functional or interoperable than a DTV set with an integrated DTV tuner.

Of course, MSTV, NAB, and ALTV do not mean to suggest that separate digital tuner-decoders should be available only to consumers that purchase new television sets. We strongly encourage manufacturers to make available to consumers digital set-top boxes that will permit consumers to view DTV signals on their current analog television sets or display monitors that do not currently include over-the-air DTV reception capability.

## **II. THE FCC HAS CLEAR AUTHORITY TO ESTABLISH A DTV TUNER REQUIREMENT.**

There is nothing remarkable or debatable about the Commission's conclusion that it has authority to "establish requirements for DTV receiver capabilities."<sup>19</sup> The All Channel Receiver Act ("ACRA"), codified as Section 303(s) of the Communications Act, clearly provides the Commission authority to adopt a DTV tuner requirement, notwithstanding the contrary arguments of the Consumer Electronics Association ("CEA")<sup>20</sup> and Thomson Multimedia, Inc.

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<sup>19</sup> *Id.*, ¶ 110.

<sup>20</sup> See Petition for Clarification and Reconsideration of the Consumer Electronics Association, MM Docket No. 00-39 (filed March 15, 2001) ("CEA Petition").

(“Thomson”).<sup>21</sup> ACRA’s language is plain and unambiguous: the Commission has the authority to require that any television set manufactured for sale in the United States capable of receiving over-the-air broadcast signals “be capable of adequately receiving *all frequencies allocated by the Commission* to television broadcasting.”<sup>22</sup> Accordingly, the Commission is authorized to ensure that *all* frequencies are adequately received, whether they are UHF or VHF frequencies and whether they carry analog or digital signals.<sup>23</sup> The Commission is entirely correct to conclude that “[w]hile Congress in 1962 did not anticipate the advent of digital television service, a plain language reading of this section does not limit our authority to analog television receivers, nor does it limit our authority to channels in the UHF band.”<sup>24</sup>

CEA’s and Thomson’s contention that “legislative history and other interpretational sources” limit ACRA’s applicability is unpersuasive.<sup>25</sup> As an initial matter, when the meaning of a statute is plain on its face, as with ACRA, there is no need to resort to its

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<sup>21</sup> See Petition for Partial Reconsideration, Thomson Multimedia, Inc., MM Docket No. 00-39 (filed March 15, 2001) (“Thomson Petition”). Because CEA and Thomson have asked that their petitions for reconsideration of the *DTV Biennial Review Order* be incorporated as comments in this proceeding, MSTV, NAB, and ALTV will respond to their arguments here, as well as in an opposition to their petitions.

<sup>22</sup> 47 U.S.C. § 303(s) (emphasis added).

<sup>23</sup> See Sixth Report and Order, MM Docket 87-268, 12 FCC Rcd 14588 (1997) (adopting, *inter alia*, procedures for assigning DTV frequencies) (“*Sixth R&O*”). In defining “frequency,” the *Sixth R&O* made no distinction between frequencies for NTSC service and DTV service. See *id.*, ¶ 1 n.2 (“As used herein, the terms ‘frequency’ or ‘channel’ generally refers to the 6 MHz spectrum block currently used to provide a single NTSC television service or to the *equivalent* 6 MHz spectrum block to be used for DTV services.”) (emphasis added).

<sup>24</sup> *DTV FNPRM*, ¶ 110.

<sup>25</sup> See CEA Petition at 5-8; Thomson Petition at 3-6.

legislative history for interpretive guidance.<sup>26</sup> Moreover, it is unavailing to observe that Congress could not have contemplated digital television when enacting ACRA in 1962. If the plain language of a statute covers a situation, the statute is applicable, irrespective of whether Congress specifically contemplated the situation in passing the statute.<sup>27</sup> By referring to “all frequencies,” rather than to “all UHF frequencies,” Congress created a statutory provision that could apply to remedy more than the specific circumstances that gave rise to the legislation. Only by unreasonably contorting canons of statutory construction can it be argued otherwise.

Even if one were to go beyond the plain words of ACRA and examine the legislative history, it is undeniably clear that the purpose for which Congress enacted ACRA – “maximum efficient utilization of the broadcast spectrum space”<sup>28</sup> – is equally applicable to the DTV transition. The parallels between the specific reasons for enacting ACRA and the reasons for applying it now to the problems encountered in the DTV transition are both compelling and obvious: (1) this is a unique transition of the entire television system; (2) while prices for receivers may initially be higher, they will fall as production increases, and the requirement

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<sup>26</sup> See, e.g., *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (“When the words of a statute are unambiguous, then the first canon is also the last: ‘judicial inquiry is complete.’”) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1998) (When statutory language is clear, a court and an agency “must give effect to the unambiguously expressed intent of Congress.”); *TVA v. Hill*, 437 U.S. 153, 184 n.29 (1978) (“When confronted with a statute which is plain and unambiguous on its face, we ordinarily do not look to legislative history as a guide to its meaning.”); *United States v. Oregon*, 366 U.S. 643, 648 (1961) (“Having concluded that the provision of [the statute] are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act.”) (footnote omitted).

<sup>27</sup> See *National Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 260-62 (1991) (finding that even though Congress intended RICO Act to combat organized crime, statute’s general language does not prohibit a RICO claim against anti-abortion activists); *Louisiana Public Serv. Comm’n v. FCC*, 476 U.S. 355, 371-73 (1986) (finding that breadth of language in statutory provision precludes narrow reading of provision based on legislative history).

would protect longer-term consumer interests; and (3) initial higher receiver costs are more than balanced by the ability to more quickly reclaim analog spectrum.<sup>29</sup> In short, as the Commission recognizes, “ACRA’s legislative history suggests that Congress’ reasoning in enacting the statute supports [the conclusion that ACRA provides authority for a DTV tuner requirement].”<sup>30</sup>

### **III. THE FCC SHOULD REQUIRE LABELING OF CABLE- AND DBS-ONLY SETS.**

MSTV, NAB, and ALTV agree with the Commission’s expectation that “consumers will continue to expect that digital television receivers will be able to receive over-the-air digital broadcast signals.”<sup>31</sup> If, notwithstanding these consumer expectations, manufacturers choose to produce television sets capable of receiving only cable or direct broadcast satellite service and not over-the-air DTV signals, then consumers should be notified. The expectation that a television set will receive over-the-air signals is so universally held and deeply ingrained that consumers must be made aware if this expectation will not be met. Accordingly, the FCC should require that manufacturers label DTV sets that are not capable of receiving over-the-air DTV signals. To the extent that the Commission already has defined labels for DTV receivers marketed as “cable ready” or “cable compatible,”<sup>32</sup> MSTV, NAB, and ALTV propose to adapt them as follows:

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<sup>28</sup> S. Rep. No. 87-1526, 2d Sess. 2 (1962), *reprinted in* 1962 U.S.C.C.A.N. 1880.

<sup>29</sup> *See DTV FNPRM*, ¶ 105 (citing NAB and NABA comments).

<sup>30</sup> *Id.*, ¶ 110. Moreover, it is erroneous to argue that the Commission’s finding that ACRA does not *mandate* dual-mode receivers is inconsistent with its conclusion that ACRA provides authority. *See* CEA Petition at 10-11; Thomson Petition at 9 (citing *DTV Fifth Report and Order*, 12 FCC Rcd 12809, 12855-56 (1997)). ACRA clearly is permissive rather than mandatory, and recognition of this difference in no way indicates a reversal of policy.

<sup>31</sup> *DTV FNPRM*, ¶ 111.

<sup>32</sup> *See* Report and Order, *In re Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket No. 00-67, FCC 00-352 (rel. Sept. 15, 2000). MSTV, NAB, and ALTV (continued...)

**DIGITAL CABLE [or DBS] READY [1, 2, or 3] ONLY**  
**Will Not Receive**  
**Over-The-Air Broadcast Signals**

These labels would simply state the capabilities of the television sets. They are strictly factual and do not make any value judgment about the lack of over-the-air reception capability.

**IV. THE FCC SHOULD UPDATE ITS RULES WITH THE NEW ATSC DTV STANDARD.**

The Commission asks whether it should revise its rules to refer to the updated ATSC DTV Standard of March 16, 2000 instead of the September 16, 1995 standard that it earlier adopted and largely incorporated into its rules.<sup>33</sup> MSTV, NAB, and ALTV fully support updating all references to “ATSC Digital Television Standard, 16 Sept 95” with “ATSC Digital Television Standard, 16 March 01.”

\* \* \*

Commission action in the form of a DTV tuner requirement is necessary if the DTV transition is to proceed apace. Without a requirement, sufficient consumer demand to spur manufacturers to action will be many, many years in coming. Accordingly, the Commission must adopt the most aggressive DTV tuner requirement possible without causing television set costs to rise unduly. As the Commission has concluded, authority for such a requirement is clearly and unambiguously provided by ACRA. Also, if manufacturers choose to produce sets incapable of any over-the-air reception, despite consumers’ contrary expectations, then the

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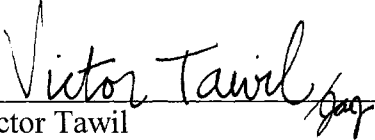
neither endorse or oppose the Commission’s choice of language for cable ready labels. Rather, the Commission should ensure that whatever labels ultimately are used include language similar to the suggested language to alert consumers that a television set is incapable of over-the-air reception.

<sup>33</sup> See *DTV FNPRM*, ¶ 112.

Commission should require labels notifying consumers that certain sets have limited functionality.

Respectfully submitted,

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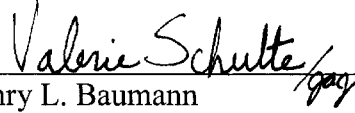


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